

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.**

JUDGMENT

Jethnath @ Jethu Nath & Ors. vs. The State of Rajasthan.

D.B.Cri. Appeal No.976/2002

Under Section 374 (2) Cr.P.C. Against
the judgment dated 28.09.02 passed by the
Addl. Sessions Judge(Fast Track), Nagaur in
Sessions Case No.229/2002 (34/2001).

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Date of Judgment: **08th August, 2007.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr. Shambhoo Singh for the appellants.
Mr.JPS.Choudhary, Public Prosecutor.
Mr. Sunil Mehta] for the complainant.
Mr. R.K.Charan]

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The present appeal has been filed by accused appellants , against the judgment of the Addl. Sessions Judge , (Fast Track) Nagaur , in Sessions Case No.229/2001 (34/2001) dated 28.09.02.

On 25.05.01 at 03.00PM complainant Birbal Nath submitted a written report at Police Station , Panchori that on 22.05.01 at about 01.00 PM his uncle Chandra Nath and aunt Rami were engaged in agricultural

operation for cleaning the field. At that time accused Jeth Nath with axe, Dhur Nath with club, Megh Nath with pharsi, Rugh Nath with kassi, Babu Nath with a club, Malam Nath with an axe and Dev Nath with club came with an intention to hurt. By then Chandra Nath, deceased, his uncle, was hit. Jeth Nath gave an axe blow on head, Dhur Nath gave a club blow and Megh Nath gave a pharsi blow on head. His aunt Rami was assaulted by Rugh Nath on head by kassi, Babu Nath gave a blow of club on the hand. Malam Nath and Dev Nath gave blows by axe and club. The accused hit his uncle and aunt. Having seen the incident, Pratap Nath He, Ramu Nath, Dhur Nath, their wives Rampyari, Chenadevi, and Roopa Ram came running. On the basis of such report report No.46/2001 was registered at Police Station, Panchori. The matter was investigated and after investigation, challan was filed. The matter was committed to the court of Sessions, from where it was made over to the trial court. At the trial, the accused were charged as follows:

<i>Sl.No.</i>	<i>Name</i>	<i>Offence u/s</i>
1	Jeth Nath	147, 148, 302, 323/149, 324/149, 325/149, 447, 307/147 IPC
2	Dhur Nath	-do-
3	Megh Nath	-do-
4	Malam Nath	147, 148, 302/149, 323/149, 324/149, 325/149, 447, 302/149 IPC
5	Babu Nath	-do-
6	Rugh Nath	-do-

The accused denied the charges and claimed trial. At the trial

prosecution produced 24 witnesses and exhibited 36 documents. Five defence witnesses were examined and 15 documents were exhibited in defence. The trial court, after considering the case of the prosecution, came to the conclusion that the case of the prosecution is made out against the accused persons as stated by the eye witnesses and, therefore, the accused appellants were convicted and sentenced as under:-

1	Jeth Nath	147, 148, 302, 323/149, 324/149, 325/149, 447, 307/147 IPC	R.I. for life and a fine of Rs.10,000/- In default of payment of fine one year's S.I. 7 years' R.I. and a fine of Rs.5,000/- and in default of payment of fine six months' S.I. 1 year's S.I. and a fine of Rs.5,000/- and in default of payment of fine six month's S.I. 1 year's S.I. and a fine of Rs.3,000/- and in default of payment of fine two months' S.I. Six months' S.I. and a fine of Rs.500/- and in default of payment of fine one month's S.I. 1 year's S.I. and a fine of Rs.500/- and in default of payment of fine one month's S.I. All the sentences were ordered to run concurrently.
2	Dhur Nath	-do-	-do-
3	Megh Nath	-do-	-do-
4	Malam Nath	147,148, 302/149, 323/149, 324/149, 325/149,447, 302/149 IPC	-do-

5	Babu Nath	-do-	-do-
6	Rugh Nath	-do-	-do-

Challenging the conviction and sentence passed against the accused persons the learned counsel for the appellant stated that the deceased has six injuries three of them are on the head and three of them are on the leg. The injured had five injuries. The prosecution case as made out against the accused persons is that six persons assaulted the injured and the deceased. If the case of the prosecution is believed then by all standards each accused would only get one piece of injury and if the eye witness PW/2 Rami is believed then seven accused came. She named apart from the six appellants one Dev Nath also. Devnath has assigned a club and if her account is taken into consideration then she states that all the seven assaulted Chandra Nath and, there are only six injuries. Therefore, the eye witness' account as given, do not conform with the medical evidence. Medical evidence is referred by the learned counsel for the accused appellant and from the statement of PW/4 Dr. Ram Vilas, a line was read over to us wherein the doctor has stated that on the person of the deceased there was no sharp edged injury. He in his cross-examination has stated :-

"यह सही है कि मृतक के कस्सी,
कुलाडी फर्सी की कोई चोट नहीं थी।"

The learned counsel further pointed out that the injured Rami, PW/2, eye witness has only one incised weapon wound. Thus, the prosecution has tried to exaggerate the case by assigning lethal weapon to five of the accused persons and only Dhur Nath, accused, has been assigned a club while inflicting injuries. By no stretch of imagination the injured and the deceased would have absence of injuries on their person except one injury to the witness Rami. Thus, the prosecution case, according to the learned counsel is a case where witnesses have tried to blow the incident out of proportion and such injuries have been incorporated in the prosecution case which are not supported by the medical evidence and the circumstances as are obtaining.

Another serious infirmity pointed out by the learned counsel for the appellant in the prosecution case is to the extent that the prosecution has tried to conceal the beginning of the prosecution story. According to PW/2 Rami, eye witness, and other eye witnesses, while the deceased and the injured were busy in collecting the cut refuse of the field, the accused came and assaulted. That is her statement in court also. When confronted with the police statement she denied to have stated to the police. In her police statement Ex.D/1 she has stated that while they were working, accused Jeth Nath was also working in the field and when on the boundary, thorn fencing was sought to be removed by the accused, there

was some altercation in between the accused and the deceased. This witness has claimed before police that while the deceased wanted to remove the fencing she rebuked , the situation got inflamed. Her police statement thus gives a different version of the beginning of the story, than the one which the prosecution has brought. According to the complainant side, they were only two and seven persons came , out of which six are accused and one has not faced the trial as being not challaned. Six persons came and gave only one injury a piece to the deceased then it is a case when each one of them waited for their turn to inflict injury , which is not done in a fight, when the accused has a common object of eliminating the deceased and from the circumstances there should have been a large number of injuries which is not there and thus the learned counsel explains that in attempting to conceal the actual start of the fight the prosecution has tried to give such colour to the incident wherein their part has been concealed by the prosecution. Two accused persons, Dhur Nath and Megh Nath have sustained injuries. The trial court has brushed aside their injuries by noticing that they were simple injuries and, therefore, the prosecution was not required to explain them.

The learned counsel for the appellant submitted that such treatment is against law. The injuries of the accused and the complainant are not weighed in golden scales. If the prosecution story has not been brought forward in its true colour, which was the initial case of the

prosecution, then injuries of the accused assumed importance. In the instant case where the accused sustained injuries, then it was a case where both the parties got enraged by each others' doing and unfortunately the deceased had the worst of it. In any case, the first injury is assigned to Jeth Nath ,who had an axe. There is no axe injury on the person of the deceased. Then it cannot be stated that there was any sharp edged injury. All the injuries to the deceased were by blunt weapon and according to the statement of PW/2 Rami, five of the accused persons had axe, Barchi, Kassi and three of them gave injuries on the head . According to the statement it is a false narration of the incident.

The learned counsel further stated that even if onus is given to the prosecution of the fact that it is not generally possible to give a graphic account of the injuries, then also it has to be taken note of that there has to be some truth in the prosecution case. The entire case turns out to be a bundle of falsehood wherein both the parties entered into a quarrel and in that quarrel common object cannot be seen. If the common object cannot be traced in the prosecution case then each individual has to be held liable for the injuries given by him. Particularisation of injury as available in the statement of eye witness, of the nature where it does not tally with medical report and, therefore, the eye witness's account is not in conformity with the prosecution case and therefore, the accused are not held guilty of the charges levelled against them. The prosecution case is

falsely made out. It was a case where both the parties quarreled and in that quarrel the accused also sustained injuries. The complainants had sustained more harm but then it has to be accounted that how the accused sustained the injuries and in that view of the matter, if the complainants are found to be in possession of the three bighas land of the accused then there was a reason for them to have taken recourse to force and in that view of the matter, the prosecution story deserves to be discarded.

Per contra, the learned counsel for the State, stated that the case is based on eye witness account. One person has died. He has sustained multiple injuries on head. The head bones have been fractured. It cannot be expected of the injured eye witness, who happened to be the wife of the deceased, to have spared the actual assailants and in that case why would she name false persons. She having named persons causing injuries to her husband, her statement deserves to be considered to be true and in that light the treatment given by the learned Judge to the prosecution case deserves to be upheld and in that light the conviction and sentences of the accused deserves to be maintained.

We have heard the learned counsel and have given our thoughtful consideration to the facts obtaining on record.

First and foremost , the question which we require to look

into is whether the beginning of the story, as given by the prosecution, is reliable or not. According to the eye witness' account the accused arrived at the scene of occurrence and they assaulted the deceased on his head and he fell down by the head injuries caused by Jeth Nath and then the other accused persons caused injuries . Jeth Nath having been assigned an axe and there being no axe injury, the beginning of the story as given by the prosecution witness, PW/2 Rami injured eye witness, does not appear to be correct.

In that view of the matter, if we consider the contradiction in her statement that in her police statement she has stated that things started with the handling of the thorn fencing on the boundary wall, it was a case where both the parties got enraged on the spur of the moment and there was no pre-meditation . If there was no pre-meditation, then there was no pre-motive to kill the deceased before the incident started , then it is difficult to conclude that there was a common object to eliminate the deceased . If there was no common object then conviction under sections 302/149 IPC is not made out and in that view of the matter, the conviction and sentence of accused persons deserves to be set aside.

Three accused persons have been convicted under sections 302/149 IPC. Therefore, the conviction of those accused persons under section 302/149 IPC , namely Babu Nath, Malam Nath and Rugh Nath u/s

302/149 IPC deserves to be set aside.

Then comes the case of the three accused persons Jeth Nath, Dhur Nath and Megh Nath. They have been convicted under section 302 IPC. Out of these three persons, two have been assigned sharp edged weapons i.e. Jeth Nath and Megh Nath. Dhur Nath has been assigned a club. There having no sharp edged injury on the head of the deceased the conviction of Jeth Nath and Megh Nath under Section 302 IPC cannot be sustained, because it cannot be stated that the injury inflicted by them was responsible for causing the death of deceased.

It leaves Dhur Nath . Which injury was caused by Dhur Nath is not made out from the prosecution case and if all the accused persons were assigned injuries on the head which are the injuries responsible for causing the death of the deceased, the accused cannot be identified with a particular injury, then he deserves to be given the benefit of doubt and in that light , the conviction of accused Dhur Nath under section 302 IPC also deserves to be set aside.

While passing the aforesaid observations, we have taken into consideration the eye witness account as given by PW/2 Rami, the injured eye witness. Because , according to the prosecution case, at the time of occurrence she was the only witness present. All other witnesses arrived

late and therefore, their statement itself make out that they came subsequent to the actual happening have occurred.

Since common object under section 302 IPC is not seen and common object of killing is not seen but nonetheless it can be seen that the deceased has sustained injuries, so also the accused. The gravity of the injuries sustained by the deceased and the appellant are of the nature which exceeds any effort to save themselves, wherein the two accused have also sustained injuries and in that view of the matter, it can be seen that at the spur of the moment a common object of killing the deceased could be formed. Common object of causing grievous hurt to the complainant party occurred and in that light the conviction of the accused persons under sections 324 /149, 323/149, 325/149 IPC appears to be generally made out. So also the offence under section 147 and 148 IPC. The offences under sections 307/149 and 447 IPC cannot be said to be made out, as has been discussed earlier, because there was no intention or object to kill, at the inception.

In the end the accused persons namely JethNath, Dhur Nath and Megh Nath are acquitted of the charges under section 302 IPC. Accused Babu Nath , Malam Nath and Rugh Nath are acquitted of the charges under sections 302 /149 IPC. They are also acquitted of the charges under Sections, 447 IPC as no case of trespass is seen, it was

only a fight on fencing . However, they are convicted under Sections 147, 148, 323, 324, 325/149 IPC. All the accused persons have remained behind the bars during the course of trial for a sufficient period. During the trial all of them were inside the jail. It was only in appeal that they were enlarged on bail and we feel that the period of about 2 1/2 years each of the accused have remained behind the bars., apart from Jeth Nath who is still in custody and he has remained behind the bars for more than 2 1/2 years. Their substantive sentence is reduced to already undergone.

We feel that the period already undergone by them will be sufficient period of sentence to all of them. All other accused persons were released on bail in appeal in the year 2004. They need not surrender to their bail bonds. Their bail bonds are cancelled.

Jeth Nath is behind the bars, he should be released forthwith if not required in any other case.

(MUNISHWAR NATH BHANDARI), J. (BHAGWATI PRASAD), J.